

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*,

Debtors.

PROMESA  
Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

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**[Accompanying Objection to Docket #17627, #17680 (seeking confirmation of the Plan)]**

**[Annotated version of #18575-page-51-to-75-of-303 that incorporates exhibit numbers]**

**DECLARATION OF PETER C. HEIN ACCOMPANYING OBJECTION TO  
CONFIRMATION OF PLAN BY INDIVIDUAL GO AND PBA BONDHOLDER**

Dated: October 19, 2021

[Annotated 11-3-2021]

## DECLARATION OF PETER C. HEIN

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief:

1. This declaration attaches certain documents, or excerpts therefrom, not already in the record that are referred to in my “Objection to Confirmation of Plan By Individual GO and PBA Bondholder.” Excerpts are submitted to facilitate focus on the specific pages pertinent to the point the exhibit supports. When I submit pertinent excerpts, I refer to a public website where the full document can be found or I will provide full copies if requested by the Court. This declaration also presents certain calculations, and identifies and summarizes pertinent information in certain documents already in the Title III case record or that were produced into the data room by AAFAF or FOMB. Because these materials are voluminous and already in the record or accessible to the Court and parties, I am not attaching them to this Declaration but am providing specific identifying information, such as docket entry and page numbers or AAFAF or FOMB production numbers. The factual statements in my “Objection to Confirmation of Plan By Individual GO and PBA Bondholder” are true and correct to the best of my knowledge and belief.

### **The cost of paying the additional 2.821% (1.5% + 1.321%) of par to all bondholders**

2. The total amount of all GO and PBA bond claims appears to be approximately \$17.59 billion. #17680-page-14n.10-of-58. The total amount of Initial GO/PBA PSA Creditor bond claims appear to have been \$11.779 billion as of 2/22/2021. (This number appears in a depository document, DocID 230822, at p.2 DS-065361, right column, 3d bullet, on a chart of information provided by FOMB to UCC and then posted by FOMB to the data room. The document is classified as confidential by FOMB, however, FOMB has consented to my use of this number from the document in a public filing, per 10-14-2021 Dale letter to Hein, p.3.) [Hein Ex. AAAA/Ex. 79, entry on exhibit list] These numbers indicate that Initial GO/PBA Creditors hold about 67% of all GO/PBA bond claims. A document posted in the data room suggests

88.49% of the tabulated CUSIPs (\$12,407,440,000 of \$14,021,531,000) participated. (This document can be accessed by using the link available in the left margin, under Quick Links, on the Prime Clerk Commonwealth of Puerto Rico website; search for DocID234213, FOMB\_CONF\_88826, in “Information relating to tender offer,” a non-confidential folder; the document is an excel spread sheet tabulation of tender offer participation for certain CUSIPs. [Hein Ex. BBBB/Ex. 80, Dkt. #18823-1] No information is provided to reconcile the totals on this document with the overall amount of bond claims specified in the FOMB brief cited above.)

3. Assume that – in addition to the Initial GO/PBA Creditors (67% of GO/PBA bond claims), who receive the extra 1.5% of par Consummation Costs and 1.321% PSA restriction fee (totalling an extra 2.821% of par paid to them pro rata) – an additional 21% of GO/PBA holders were induced by the promise of an extra 1.321% of par to commit to support and vote for the plan, and signed on to the PSA by 8/13/2021. The cost of providing to all GO/PBA bond claims the same pro rata recovery that the Initial GO/PBA Creditors receive (i.e., the added pro rata payments of  $1.5\% + 1.321\% = 2.821\%$  of par) would be: (i) [for the 12% of bondholders ( $100\% - 67\% - 21\% = 12\%$ ) who currently do not receive either the 1.5% fee or 1.321% fee]:  $12\% \times \$17.59 \text{ billion} \times 2.821\% = \$59.54 \text{ million LESS } \$50 \text{ million (allocated already for Retail Support Fees)} = \$9.545 \text{ million, PLUS (ii) [for the 21\% of bondholders whose plan support and vote was purchased by 8/13/2021 and thus who already get the 1.321\% fee but who are not among the Initial GO/PBA Creditors (67\% of bond claims) who get both the added 1.5\% and the added 1.321\%]: } 21\% \times \$17.59 \text{ billion} \times 1.5\% = \$55.408 \text{ million, for a total of approx. } \$64.953 \text{ million.}$

4. The net cost of paying the 1.321% of par to the 12% (presumably for the most part Retail Investors), irrespective of whether their classes vote “accept” or “reject”, and irrespective of whether they worked through the confusion in the ATOP delivery process, would appear to be less than the \$50 million already allocated for Retail Support Fees. ( $12\% \times \$17.59 \text{ billion} \times 1.321\% = \$27.883 \text{ million, which is less than } \$50 \text{ million.}$ ) FOMB has been willing to make repeated adjustments significantly sweetening Plan terms for Commonwealth’s government and its public employees and public employee retirees, most recently agreeing to eliminate any

cuts to accrued public employee and retiree pensions and to provide substantial additional funds for various purposes. *See* Exhibit V hereto (10-14-2021 FOMB letter, further described below). [Hein Ex. BB/Ex. 28, Dkt. #18760-11] The added cost (likely in the area of \$64.953 million) to pay all bondholders the same pro rata consideration is minor as compared to (i) the staggering amounts of professional and other fees and costs paid in these proceedings (which, as I discuss below, are on track to exceed \$2.5 billion), and (ii) the billions of dollars of payments to favored constituencies, including billions of dollars of likely future “upside” payments to public employees and retirees. *E.g.*, #16908-page-15-to-20-of-178.

5. Even if my numbers are somewhat off, the foregoing calculations suggest the magnitude of the additional payment amounts required to treat all bondholders equally – and not preferentially provide added pro rata consideration to hedge funds and other institutions that individual Retail Investors do not receive – are modest by comparison to the large sums being disbursed under the Plan to favored constituencies and in professional and other fees and costs. FOMB and AAFAF surely have exact numbers, so if FOMB and AAFAF dispute my calculations, they should proffer the actual numbers and the backup for the actual numbers.

### **Official Statements**

6. **General obligation bonds:** Excerpts from the Series 2012A official statement are already in the record at #9508-2. [Hein Ex. A/Ex. 1, Dkt. #18758-1] Similar material appears in other official statements for Commonwealth GO bonds. The official statements are publicly available on the Municipal Securities Rulemaking Board’s EMMA website ([emma.msrb.org](http://emma.msrb.org)). One can simply type in a CUSIP (*e.g.*, 74514LB63 for the Series 2012A 2037 maturity) and click on “Disclosure Documents.”

7. **Public Building Authority bonds:** Attached as Exhibit A are excerpts from the Series Q official statement. [Hein Ex. B/Ex. 2, Dkt. #18758-2] Similar material appears in other official statements for other PBA bonds. The PBA official statements are also publicly available on the Municipal Securities Rulemaking Board’s EMMA website ([emma.msrb.org](http://emma.msrb.org)). One can

simply type in a CUSIP (e.g., 745235M24 for the Series Q 2037 maturity or 745235P62 for the Series S 2039 maturity) and click on “Disclosure Documents.”

**Puerto Rico’s Investor Resources webpage representations that the debt limitation in the Puerto Rico Constitution has never been reached**

8. Puerto Rico’s “Investor Resources” webpage for Commonwealth of Puerto Rico is already in the record at #7961-1-page-6-to-8-of-71 (screen shot taken 6/24/2019) [Hein Ex. C/Ex. 3, Dkt. #18758-3] and #10029-5 (screen shot taken from Internet 1/9/2020) [Hein Ex. D/Ex. 4, Dkt. #18758-4]. To locate on the Internet, type in “Government Development Bank for Puerto Rico – Tax-Exempt Securities by Issuer”; scroll down to “Commonwealth of Puerto Rico” (the first entry); click and scroll down to “Security.” This Investor Resources webpage includes the following statements:

Public Improvement Bonds are general obligations of the Commonwealth for the payment of which the good faith, credit and taxing power of the Commonwealth have been pledged. Their payment constitutes a first charge on all available revenues of the Commonwealth ...

... The Constitution of the Commonwealth provides that no additional direct debt may be issued or additional guarantees extended if the principal and interest payments for general obligation bonds and notes due in any fiscal year, together with any amount paid by the Commonwealth in respect to its guarantees in the preceding fiscal year, exceed 15 percent of the average annual general revenues of the Commonwealth for the two preceding years. ***This debt limitation has never been reached.*** (#7961-1-page-6-to-7-of-71 [Hein Ex. C/Ex. 3, Dkt. #18758-3], #10029-5-page-1-to-2-of-3 [Hein Ex. D/Ex. 4, Dkt. #18758-4], emphasis added)

**Kobre & Kim report**

9. Attached hereto as Exhibit B [Hein Ex. E/Ex. 5, Dkt. #18758-5] are excerpts from the August 2018 Kobre & Kim “Final Investigative Report”, including Part IX, “Calculation of the Constitutional Debt Limit”. For a link to the full copy of the report, *see* <https://www.documentcloud.org/documents/4777926-FOMB-Final-Investigative-Report-Kobre-amp-Kim.html>. FOMB, acting by and through the Special Investigation Committee, retained Kobre & Kim as the Independent Investigator to (among other things) “conduct an investigation

under PROMESA into ... Puerto Rico's issuance of debt." *See* Report, Ex. B, [Hein Ex. E/Ex. 5, Dkt. #18758-5], p.2; #3774. Kobre & Kim concluded (Report, Ex. B, p.267) that

Puerto Rico employed a reasonably robust process for these Debt Limit Calculations. In addition, we did not find any evidence that Puerto Rico's government personnel believed that Puerto Rico's interpretation of the Constitutional Debt Limit was wrong or that Puerto Rico performed the Debt Limit Calculation incorrectly.

**Commonwealth has sufficient cash to pay all principal and interest due on its GO and PBA debt**

10. Commonwealth's fiscal year 2018 audited financial statements state that, as of 5/31/2021, the total past-due Commonwealth and PBA principal and interest was \$6.79 billion (\$5.536 billion + \$1.256 billion). *See* #17628-14-page-107-of-471 note 3(d). [Hein Ex. VV/ Ex. 48, Dkt. #18760-31]

11. Attached as Exhibit C hereto [Hein Ex. F/Ex. 6, Dkt. #18758-6] are excerpts from the monthly AAFAF "Summary of Bank Account Balances for the Government of Puerto Rico and its instrumentalities," dated 9/30/2021. As of August 31, 2021, (a) Commonwealth held a total of \$25.413 billion of cash. (Ex. C, p.4, sequence 00054) and (b) Commonwealth held approximately \$11.770 billion cash in its unrestricted TSA account and its TSA sweep account (Ex. C, p.7, sequence 00057, \$11.580 billion + \$.190 billion). In addition, Commonwealth held over \$745 million cash in accounts restricted to payment of general obligation debt (Ex. C, p.11, sequence 00061, \$599.7 million + \$146.6 million). AAFAF summaries of bank account balances for the government of Puerto Rico and its instrumentalities are available on the AAFAF website at "aafaf.pr.gov/financial-documents"; click on "Summary of Bank Account Balances".

12. Attached as Exhibit D [Hein Ex. G/Ex. 7, Dkt. #18758-7] are excerpts from a more recent report, Commonwealth's Treasury Single Account ("TSA") cash flow report as of October 1, 2021, which shows a TSA cash account balance as of 10/1/2021 of \$11.799 billion (Ex. D, p.5). TSA cash flow reports are also available on the AAFAF website at "aafaf.pr.gov/financial-documents"; click on "Treasury Single Account (TSA) Liquidity."

**Commonwealth has the capacity to pay all principal and interest due on its GO and GO guaranteed debt**

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**FOMB's certified fiscal plan for Commonwealth**

13. The full text of the certified 2021 and 2020 fiscal plans is available on the FOMB website: <https://oversightboard.pr.gov/fiscal-plans-2/>, or as Disclosure Statement exhibits: #17628-8, for the 4/23/2021 fiscal plan, and #15988-5, for the 5/27/2020 fiscal plan. Specific topics covered in the fiscal plans include those outlined in the sections that follow.

**The fiscal plan shows current prepetition contractual debt service is projected to be about 8.5% to 8.8% of projected expenditures.**

14. FOMB projects expenditures of \$19.771 billion in FY22, and “[d]ebt service based on prepetition contractual debt obligations” for GO, PBA, CCDA, PRIFA, PFC and ERS of \$1.749 billion, or just 8.8% of projected expenditures. #17628-8-page-302-&-n.2-of-309. For FY2026, FOMB projects expenditures of \$19.581 billion (assuming inflation of 1.1% to 1.5%), and prepetition contractual debt service of \$1.66 billion, or just 8.5% of expenditures. *Id.*

15. The prepetition contractual debt service of \$1.749 billion for FY2022 and \$1.668 billion for FY2026 is much less than the projected annual pension expenses, which are now presumably even greater since accrued benefits are now apparently not being reduced for anyone under the Plan, no matter how highly compensated. Projected pension expense in the 4/23/2021 fiscal plan is \$2.307 billion (for FY2022) and \$2.263 billion (for FY2026) (#17628-8-page-304-of-309), and, as noted — since pensions will now not be reduced — will presumably be higher.

**The fiscal plan shows current prepetition contractual debt service is projected to be about 8.0% to 8.1% of projected revenues.**

16. FOMB also projects that, in FY22, “[d]ebt service based on prepetition contractual debt obligations” for GO, PBA, CCDA, PRIFA, PFC and ERS of \$1.749 billion will be just 8.1% of projected revenues of \$21.487 billion. #17628-8-page-302-&-n.2-of-309. For FY2026, FOMB projects revenues of \$20.914 billion (assuming inflation of 1.1% to 1.5%), and prepetition contractual debt service of \$1.668 billion, or just 8.0% of revenues. *Id.* (To the extent inflation exceeds the projected 1.1% to 1.5%, the fixed prepetition contractual debt service

amount will likely be even less as a percent of revenues in future years. Also, while FOMB may argue that the Ex. 154 chart in the section titled “24.1 Detailed financial projections” does not distinguish local Puerto Rico source revenues versus federal source revenues, and that prepetition contractual debt service would be higher as a percentage of local Puerto Rico source revenues, that does not alter the fact that Puerto Rico – based on FOMB’s own numbers and projections – can pay its full current, prepetition debt service obligations – and certainly its GO and PBA debt service obligations that have Constitutional priority. The conclusion is further re-enforced when one considers that, as has been the practice for a number of years, federal funds will be available to pay a substantial share of the large annual Medicaid expenditures (as discussed below). In sum, it is manifest that Puerto Rico – on FOMB’s own numbers – has ample capacity to pay full prepetition contractual debt service.

**Projections premised on population data that is inconsistent with U.S. Census population counts and estimates.**

17. There are significant inconsistencies between official U.S. Census population data for Puerto Rico and the 4/23/2021 fiscal plan population data that underlies the financial and economic projections used in the fiscal plan. The 4/23/2021 fiscal plan asserts FY2020 population was 3,030,000, and in a steady decline, to 2,928,000 in the current fiscal year (FY2022), going down to 2,764,000 in four years (FY2026), and continuously declining thereafter with a 33% drop by FY2051. *See* [Hein Ex. H/Ex. 8, Dkt. #18759-1], #17628-8-page-42-to-43-of-309, pp.41-42, Ex. 17 & note on Ex. 17. The 4/23/2021 fiscal plan population forecasts are across the board even somewhat lower than those in the 5/27/2020 plan. *Compare* 5/27/2020 plan, #15988-5-page-39-of-272, p.38 Ex. 13.

18. By contrast, the latest U.S. census data shows population numbers that are markedly higher. Thus, per the U.S. census, Puerto Rico’s population on 4/1/2020 (in fiscal 2020) was an actual 3,285,874, over 8.4% higher than the 2020 FY population assumed in the fiscal plan. #18181-page-103-of-157. [Hein Ex. J/Ex. 10, Dkt. #18759-3] Whereas the fiscal plan shows a steady decline year after year, the U.S. Census actual count as of 4/1/2020 was up



2.89% from the Census Bureau's 7/1/2019 estimate of 3,193,694. #18181-page-103-of-157. The United States Census "Quick Facts" Puerto Rico is in the record at #18181-page-103-to-105-of-157 and available on the Internet at <https://www.census.gov/quickfacts/PR>. A larger population than FOMB assumed will enhance Puerto Rico's ability to pay its prepetition contractual debt service.

**Past underestimation of revenues.**

19. FOMB's 5/27/2020 fiscal plan projected – for FY2021, set to begin a month later – \$20.900 billion in revenues (including general fund revenues of \$9.223 billion), \$20.566 billion in expenses, \$0.1 billion in "measures", and a post-"measures" surplus of \$0.440 billion. (#15988-5-page-41-to-42-of-272, pp.40-41 Ex. 14-15). [Hein Ex. I/Ex. 9, Dkt. #18759-2] Following the completion of FY2021 (ending June 30, 2021), we know that actual FY2021 revenues were \$25.659 billion (24.7% greater than FOMB's estimates), including general fund revenues of \$12.474 billion (35.2% greater), \$21.689 billion in expenses, and \$3.970 billion net operating cash flow. The 6-30-2021 TSA cash flow report (excerpts in the record at #18181-page-106-to-121-of-157) shows on page 9 the actual fiscal year 2021 revenues, general fund revenues, expenses and net operating cash flow. *See* #18181-page-113-of-157.

20. Based on the foregoing, in fiscal 2021, Commonwealth had \$3.530 billion more capacity to meet its obligations than FOMB forecast on 5/27/2020 (\$3.970 billion - \$0.440 billion).

**FOMB's assumption that Medicaid expenses will increase dramatically but federal funding will fall off a cliff.**

21. The 4/23/2021 fiscal plan shows Commonwealth Medicaid expenditures increasing from \$1.968 billion in FY2021 to \$2.974 billion (#17628-8-page-53-of-309), yet federal Medicaid funding is projected to drop from \$2.46 billion in FY2021 to \$0.468 billion in FY2023 and \$0.519 billion in FY2026 (#17628-8-page-48-of-309). The fiscal plan assumes that federal funding will drop off a cliff, even though (i) Puerto Rico has received "increased levels

of federal reimbursement” since at least 2011 (#17628-8-page-47-to-48-of-309), and (ii) based on public statements, leaders of both parties in Congress as well as Puerto Rican Government officials believe there will be significant increases in federal Medicaid funding for 2022 and future years. *E.g.*, #18181-page-122-to-134-of-17. [Hein Exs. QQ/43, RR/44, SS/45, TT/46 and UU/47, Dkt. #18760-26 through #18760-30]

22. In effect, FOMB assumes (as a given) significant continued, and increased, Medicaid expense, but does not factor in corresponding increased federal Medicaid funding to pay for this large spending, and thus assumes the Commonwealth General Fund will bear virtually all of these large Medicaid expenditures.

23. A more realistic assumption – that federal funding would at least keep pace with the Medicaid expenses requiring such federal funding – would result in a net increase of \$2.5 to \$3.0 billion per year in Puerto Rico’s ability to meet its obligations.

**Pensions have continued to be paid in full on a PayGo basis throughout this Title III**

24. Through this Title III process, pensions for public employee retirees have continued to be paid in full and in cash. Attached as Exhibits E, F, G and H are excerpts from AAFAF PayGo reports, on AAFAF’s website, reflecting PayGo costs for FY2018, FY2019, FY2020 and FY2021. [Hein Exs. L/12, M/13, N/14 and O/15, Dkt. #18759-5 through 18759-8] Also, attached as Exhibit J is a summary of the PayGo costs for those years produced in the data room (AAFAF\_CONF\_0008453). (Exhibit G was pulled from the AAFAF public website; it is not clear why this public document is marked “CONFIDENTIAL”.)

25. The PayGo reports and summary data produced show that an average of over \$2 billion per year has been spent on PayGo pension expense for Commonwealth (including the Judicial and Teachers’ Retirement Systems). Had the priorities under the Puerto Rico Constitution been followed, approximately \$10 billion spent since this Title III was filed in May 2017 would have been available to pay GO and PBA debt service. If the priorities under the

Puerto Rico Constitution are followed going forward, at least an additional over \$2 billion per year will be available to pay GO and PBA debt service.

**1.03% property tax revenues**

26. Act 83 of 1991 (codified 21 L.P.R.A. §5001 et seq.) establishes a “special tax of [1.03%] per annum on the appraised value of all personal and real property in Puerto Rico not exempted from taxes” “for the amortization and redemption of the general obligations of the Commonwealth.” The 1.03% of property tax is specifically committed by statute to the payment of principal and interest on existing GO bonds: by statute (21 L.P.R.A. §5005) commitment of the 1.03% of property tax to the payment of principal and interest on GO bonds “will be considered to be a prior lien bond.” The “Summary of Bank Account Balances” report on AAFAF website (Exhibit C p.11, sequence 00061, headed “Restricted Amounts Subject to Title III Proceedings”) shows a balance as of 8/31/2021 of \$599.7 million of “GO Redemption Funds” “from the 1.03% property tax collected since fiscal year 2017 and deposited in the Public Debt Redemption Fund,” up from \$556.1 million as of the month before. [Hein Ex. F/Ex. 6, Dkt. #18758-6]

27. The 4/23/2021 fiscal plan states that property tax collections have averaged only about 68%, “which is well below comparable U.S. jurisdictions. Low compliance rates and thousands of properties in Puerto Rico that do not appear on the property tax rolls affect the revenue productivity and fairness of the property tax system.” #17628-8-page-262-of-309, p.261. [Hein Ex. H/Ex. 8, Dkt. #18759-1] Exhibit I, a document produced into the data room by AAFAF (AAFAF\_CONF\_0008624) is a summary CRIM document showing substantial uncollected 1.03% property tax amounts for each of FY2016-FY2020. [Hein Ex. P/Ex. 16, Dkt. #18759-9] Another Commonwealth document in the data room (ASSETS\_2004\_0002154 to 2169, at 2169), shows \$464,591,994 uncollected from 2002 through some point in 2019. (This document is designated as confidential, but AAFAF has agreed that I can include this

number in my public filing, *see* 10-11-2021 McKeen letter to Hein, p.1.) [Hein Ex. CCCC/Ex. 81]

28. In sum, the 1.03% property tax already yields substantial funds annually that can only be applied to GO debt service, and collections of the 1.03% property tax can and should be increased.

**Commonwealth's capacity to raise revenues sufficient to cover essential expenditures yet still pay its Constitutional "first claim" bonds in full.**

**Puerto Rico's representation that its per capita debt level should be compared to the state, local and federal debt levels of states.**

29. Attached as Exhibit K are excerpts from a presentation made in a Commonwealth of Puerto Rico investor webcast on October 15, 2013. (The full text of the presentation appears at Docket #4606-8-page-1-to-73 and is also available on the Commonwealth of Puerto Rico, Government Development Bank, Investor Presentations website at <http://www.gdb-pur.com/documents/UpdateonFiscalandEconomicProgressWebcast-Final.pdf>; or type into google "government development bank Puerto Rico investor presentations") [Hein Ex. Q/Ex. 17, Dkt. #18759-10] On page 57, Puerto Rico was explicit that "any comparison of the public debt levels of Puerto Rico with the states should include state, local and federal debt" and that "If one factors in the federal debt load, PR would rank **last** in outstanding debt per capita among all US jurisdictions" (emphasis added), citing to US Bureau of the Census and the Government Development Bank for Puerto Rico as the source of the data.

**Puerto Rico's comparative tax burden.**

30. Attached as Exhibit L are excerpts from Commonwealth of Puerto Rico Tax Reform Assessment Project, Executive Summary Oct. 31, 2014 (a fuller version of this document is available on the Internet; type in "KPMG Commonwealth of Puerto Rico Tax Reform Assessment Project" or go to [http://www.hacienda.gobierno.pr/sites/default/files/unified\\_tax\\_code\\_of\\_pr\\_executive\\_summary\\_0.pdf](http://www.hacienda.gobierno.pr/sites/default/files/unified_tax_code_of_pr_executive_summary_0.pdf)). [Hein Ex. R/Ex. 18, Dkt. #18760-1] Page 6 shows Puerto Rico's taxes as a percentage of GDP were lower than all OECD countries

listed. Page 7 shows tax collections in Puerto Rico were 10.66% of GDP, compared to an OECD average of 33.19%. (A fuller version of this document also appears in Docket #4606-8-page-76-to-93-of-180.)

31. Most Puerto Rico taxpayers do not pay federal income taxes, and, as a result, Puerto Rico has greater debt capacity relative to its economy than the states. For those who do not receive the benefit of the many Puerto Rico incentives (discussed below), the highest basic marginal rate in Puerto Rico is 33%. <https://taxsummaries.pwc.com/puerto-rico/individual/taxes-on-personal-income> [Hein Ex. DDDD/Ex. 82, Dkt. #18823-2] (There is also a “gradual adjustment tax” for individuals with net taxable income greater than \$500,000; these taxpayers pay an additional tax that is 5% of the excess of their total net taxable income over \$500,000, limited to 33% of their personal and dependents’ exemption plus \$8,895.)

32. In many states, whose residents bear the burden of high federal rates on top of state rates, the overall state, local and federal tax burden far exceeds that of Commonwealth taxpayers. For example, in New York City the top combined state, city and federal rate (including net investment income tax) is 55.6%. In California, 54.1%. In fact, since the top federal marginal rate is 40.8% (37% marginal rate plus 3.8% net investment income tax), it can be said that higher income taxpayers everywhere in the 50 states pay a higher combined state, city and federal rate than their counterparts in Puerto Rico.

**Puerto Rico’s numerous tax incentives and recent legislative enhancements of tax incentives and reductions in tax rates**

33. The 4/23/2021 fiscal plan acknowledges that a report on Puerto Rico’s “tax expenditures” – i.e., revenue losses resulting from tax preferences and incentives – showed that “Puerto Rico issues more than 300 tax incentives with total foregone revenue in excess of \$21 billion” and “that Puerto Rico offers a far more generous tax incentive program far more generous than virtually every other jurisdiction in the U.S. as a share of the economy or total tax collections.” [sic] #17628-251-to-253-of-309, pp.250-52. [Hein Ex. H/Ex. 8, Dkt. #18759-1]

Data in the 4/23/2021 fiscal plan is from a tax expenditure report Puerto Rico issued in September 2019 for tax year 2017, in response to the FOMB's requiring such a report.

34. As evident from the fiscal plan's Ex. 124 & 125 bar charts (#17628-8-page-252-to-253-of-309), the size of Puerto Rico's tax expenditures as a share of GNP or GDP, and as a share of total taxes, is literally "off the charts" compared to the United States as a whole or any individual state. #17628-8-page-252-253-of-309, pp.251-52. [Hein Ex. H/Ex. 8, Dkt. #18759-1] For example, Puerto Rico's tax expenditures are 30% of GNP and 20% of GDP, whereas in New York tax expenditures are 2.5% of gross state product. #17628-8-page-252-of-309, p.251-Ex. 124. Puerto Rico's tax expenditures are 218% of total taxes, as compared 54% in New York. #17628-8-page-253-of-309, p.252-Ex. 125. In May 2021 Puerto Rico issued a tax expenditure report for tax year 2018 but – to quote from page 9 of the report – "There are no totals shown for tax expenditures in this [tax year 2018] Report." Excerpts from this report for tax year 2018 are attached as Exhibit BB; the report is available on the internet at [http://www.hacienda.gobierno.pr/sites/default/files/tax\\_expenditure\\_report\\_for\\_tax\\_year\\_2018\\_rev\\_9-june-2021\\_0.pdf](http://www.hacienda.gobierno.pr/sites/default/files/tax_expenditure_report_for_tax_year_2018_rev_9-june-2021_0.pdf) [Hein Ex. EE/Ex. 31, Dkt. #18760-14]

35. Puerto Rico – despite filing in Title III and not paying any interest or principal on its general obligation debt since January 2016 (Ex. HH, AAFAF 8-27-2021 Response, p. 37, described further below) [Hein Ex. KK/37, Dkt. #18760-20] – has in the past several years enacted multiple reductions in tax rates and new tax incentives. On December 10, 2018 Puerto Rico enacted Act 257-2018, which is in the data room at AAFAF\_CONF\_0008098. [Hein Ex. EEEE/Ex. 83, Dkt. #18823-3] This bill is 228 pages long. As explained in the Statement of Motives, "[t]his reform introduces various changes to the income tax regime for both individuals and corporations. In the case of individuals, they shall be provided with a dollar-for-dollar reduction of 5 percent (5%) in the amount they currently pay ....." (Act 257-2018, p.6, AAFAF\_CONF\_0008103). Act 257-2018 also reduced tax rates applicable to corporations (id. at p.10, AAFAF\_CONF\_0008107).

36. Legislation approved the next year, on July 1, 2019, Act 60-2019, noted that Act 257-2018 – also called the “New Tax Model” - reduced rates (Act 60-2019, p.3; in data room at AAFAF\_CONF\_0007654). [Hein Ex. FFFF/Ex. 84, Dkt. #18823-4] Another subsequent Act, Act 40-2020 approved April 16, 2020 (in the data room at AAFAF\_CONF\_0007494) described Act 257-2018 as having “lightened the tax burden of individuals and corporations,” “eliminated the tax on services rendered between businesses and designated professional services (known as B2B) for 77% of taxpayers” and “reduced the SUT for prepared foods from 11.5% to 7%” (Act 40-2020, page 2, [Hein Ex. GGGG/Ex. 85, Dkt. #18823-5] AAFAF\_CONF\_0007495).<sup>1</sup> A contemporaneous report by Reuters (#4606-8-page-167-of-180), characterized Act 257-2018 with the headline “Puerto Rico Governor signs bill for \$2 billion in tax relief,” 12/10/18 (on Internet) (reporting that Puerto Rico lowered taxes by about \$2 billion). [Hein Ex. IIII/Ex. 87 Dkt. #18823-7]

37. Act 60-2019 – called the “Puerto Rico Incentives Code” – is a 420 page long enactment of new and revised tax incentive provisions. Among the tax incentives are special rates and privileges for “Exempt Business” (page 30), which is any “Eligible Business” “that has been granted a Decree”. “Eligible Business” includes “individuals or business activities that qualify for a Decree” including (i) Individual Resident Investors who relocate to Puerto Rico, and (vi) “Private Equity Funds” (page 29). These “Exempt Business” taxpayers have a “preferential flat income tax rate of 4 percent (4%), in lieu of any other income tax” (page 86, §2011.02(a)(1)). The stockholders or partners of a corporation or partnership that is an “Exempt Business holding a Decree” “shall not be subject to the payment of income tax on distributions of dividends or profits from the Exempt Income of said Exempt Business.....” (page 86, §2011.02(b)(1)). An Exempt Business also has a 75% exemption on the real and personal property tax (page 89, §2011.03(a)). [Hein Ex. FFFF/Ex. 84, Dkt. #18823-4]

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<sup>1</sup> The data room is accessible through the Prime Clerk website (see menu on left side of screen) which lists under “quick links,” as the 15th item down, “Disclosure Statement Data Room”.

38. For income derived from interest and dividends by a Resident Individual Investor, there is an “[exempt[ion] from income taxes in Puerto Rico” (page 96, §2022.01(a)). [Hein Ex. FFFF/Ex. 84, Dkt. #18823-4]

39. The 420 page Act 60-2019 even provides special benefits for “film projects” which are defined to include “video games” (pages 253-254, §§2091.01(a)(1) and 2091.01(a)(1)(iv)(F)). [Hein Ex. FFFF/Ex. 84, Dkt. #18823-4]

40. The Act 60-2019 incentives are summarized in Exhibit M, a screen shot from the Invest Puerto Rico website, <https://www.investpr.org/puerto-rico-tax-incentives> [Hein Ex. S/Ex. 19, Dkt. #18760-2]

Some of Act 60’s highlights:

- 4% flat income tax rate
- 0% Distribution of Dividends Rate
- 75% Property Tax Exemption
- 75% Exemption on Construction Taxes
- 50% Exemption on other Municipal Taxes
- 50% Municipal Patent Exemption

41. Act 40-2020 (AAFAF\_CONF\_0007494, at 0007496) states that although Act 257-2018 “achieved a 5 percent (5%) dollar-for-dollars reduction for individuals” Act 40-2020 would “lighten the tax burden of our workforce even further” by “providing an additional reduction of 3 percent (3%) to taxpayers whose gross income does not exceed \$100,000; for a total reduction of 8% for individuals who earn \$100,000 or less”. Act 40-2020 is 160 pages. [Hein Ex. GGGG/Ex. 85, Dkt. #18823-5]

42. Yet further tax reductions were enacted in Act 57-2020, the “Supplemental Act to Address the Effects of the Puerto Rican Economy Caused by the COVID-19 Emergency” (AAFAF\_CONF\_0008326, at 8328, available in the data room). [Hein Ex. HHHH/Ex. 86, Dkt. #18823-6]



**Recipients of \$2 billion of tax credits are granted unimpaired claims with full recoveries**

43. The Plan provides that almost \$2 billion (\$1,972,113,081) of “tax credit claims,” as well as \$466,772 of energy incentive claims, will be **unimpaired**. See class 57 and class 55 treatment, #17628-page-489-to-491-of-654. These claims are unsecured and do not have the constitutional priority of GO and PBA claims. For example, all three of the largest class 57 claims identified by FOMB (10-14-2021 Dale letter to Hein, p.6) are expressly stated to be unsecured: (i) \$466,538,298 class 57 claim of Cordis, claim 62668, p.3, item 10 (search claims data base for claim 62668), (ii) \$216,530,073 class 57 claim of MSD International GMBH, claim 90909, p.3, item 10, and (iii) \$153,897,343 class 57 claim of McNeil Healthcare, claim 67125, p.3, item 10.

**Total outflows increased over 29% FY2018-FY2021, without any determination as to which expenditures are “essential”**

44. Attached as Exhibit CC are excerpts from the Puerto Rico Department of Treasury TSA cash flow report as of 6/29/2018, and attached as Exhibit DD are excerpts from the TSA cash flow report as of 6/30/2021. [Hein Ex. FF/Ex. 32 and GG/33, Dkt. #18760-15 and #18760-16] No TSA cash flow reports appear on the AAFAF, “Financial Documents” web page covering full fiscal years before FY2018 (the earliest dated TSA cash flow report is dated 10/20/2017). “Total outflows” increased over 29%: (i) from \$16.752 billion in FY2018 (as of 6/29/2018) (Ex. CC, p. 8), the earliest full fiscal year for which data is available, (ii) to \$21.689 billion (as of 6/30/21) for FY2021 (Ex. DD, p.8); the “total outflows” for FY2021 of \$21.689 billion were \$1.375 billion higher than plan (Ex. DD, p.8). (While Exhibit DD is labeled “CONFIDENTIAL,” I pulled it from AAFAF’s public website and it does not appear to have information any more “confidential” than the many similar TSA cash flow reports that appear in the same location on the AAFAF website.)

**Expenditures for Advertising Representation, Artistic Services and Consulting Services**

45. Attached as Exhibits O, P, Q and R are printouts of excerpts from searches for contracts in the Contract Registry database maintained by the office of the Puerto Rico

Comptroller. Per the Comptroller's website, it appears this Contract Registry dates back many years, perhaps to 1975. *See* <https://www.ocpr.gov.pr/registros/consulta-de-registro-de-contratos/>. [Hein Ex. U/Ex. 21, V/22, W/23 and X/24, Dkt. #18760-4 through #18760-7]

46. To conduct a search, type in <https://consultacontratos.ocpr.gov.pr/>. Then select Service Category, such as “advertising, representation or artistic services” or “consulting services”; then put in the date range (for example) 5/3/2017 (when this Title III was filed) through 10/13/2021. The database shows there were 9789 “advertising, representation or artistic services” contracts in this period, totalling \$301,418,709. *See* Exs. O and P. [Hein Ex. U/Ex. 21 and V/22, Dkt. #18760-4 & 5] A search for “consulting services” for the same time frame shows 9918 contracts totalling \$2,375,668,318. *See* Exs. Q and R. [Hein Ex. W/Ex. 23 and X/24, Dkt. #18760-6 & 7]

#### **Continued payment of Christmas bonuses**

47. Over \$475 million has been paid out in Christmas bonuses to public employees in FY2016-2021. *See* AAFAF\_CONF\_0008454, produced by AAFAF (Exhibit S hereto). [Hein Ex. Y/Ex. 25, Dkt. #18760-8]

#### **Public employee attendance**

48. Attached hereto as Exhibit N are excerpts from an “Office of the Administration and Transformation of Human Resources” (“OATRH”) Attendance Report as of October 2020 “Prepared for the FOMB” with the logo “FAFAA, Puerto Rico Fiscal Agency and Financial Advisory Authority.” Available on the Internet at <https://www.aafaf.pr.gov/wp-content/uploads/2g-oatrh-attendance-report-october-2020.pdf>. [Hein Ex. T/Ex. 20, Dkt. #18760-3] This shows attendance for public employees from the week beginning 12/31/17 to the week ending 10/31/20, after which the reports ceased. (This report is stamped “confidential,” but has been publicly available for months on AAFAF’s public website; it is not clear why the report is stamped “confidential.”)

49. These OATRH attendance reports are a stated requirement imposed by FOMB. *See* #17628-8-page-289-of-309. [Hein Ex. H/Ex. 8, Dkt. #18759-1] OATRH had been regularly issuing these attendance reports “Prepared for the FOMB” for years, as is evident from checking the AAFAF website. Available on <https://www.aafaf.pr.gov/financial-documents/attendance-report/>. For reasons never explained, these reports ceased to be made publicly available after October 2020, as is also evident from the AAFAF website. I propounded discovery to find out why OATRH ceased to issue these monthly attendance reports, but FOMB and AAFAF refused to say. *See* Ex. HH p.30-31, Ex.II p.25, Ex.JJ p.14, Ex. KK p.15, Ex. LL p.11-12, Ex. MM pp.14. [Hein Ex. KK/Ex. 37, LL/38, MM/39, NN/40, OO/41, PP/42, Dkt. #18760-20 through #187160-25]

50. Per Exhibit N, of 114 government agencies, 85%+ reported attendance when the reports began in 2017. By the last week of October 2020, only 8.77% reported attendance – just one-tenth the number in late 2017. *See* second column. [Hein Ex. T/Ex. 20, Dkt. #18760-3]

51. Even before the pandemic hit, in January 2020, the percent of “employees working” (the fourth column) was as low as 16.73% to 38.55%. Ex. N, p.4. [Hein Ex. T/Ex. 20, Dkt. #18760-3]

**Puerto Rico’s costs incurred in its efforts to avoid paying its debt appear to be on track to exceed \$2.5 billion.**

52. The costs incurred by Puerto Rico for the FOMB/Title III process, combined with other costs incurred by Puerto Rico in its efforts to avoid paying its debt, appear now to be on track to exceed \$2.5 billion. One must compile the cost data from various different sources. The costs include (a) professional fees projected at approximately \$1.6 billion for the FY2018-FY2026 period (per FOMB 4/23/2021 fiscal plan, #17628-8-page-58-of-309) [Hein Ex. H/Ex. 8, Dkt. #18759-1], (b) FOMB operating costs which appear to be in the area of \$625 million (the 10/23/2018 fiscal plan, p.29 [DRA Ex. 233, Dkt. #18790-2-page-29-of-148], estimated FOMB operating costs at \$430 over 6 years (apparently FY2018-FY2023); the 4/23/2021 fiscal plan forecasts \$75 million pre-measures, \$65 million post-measures, per year through FY2026, which

will add another at least \$195 million for FY2024-FY2026) [Hein Ex. H/Ex. 8, Dkt. #18759-1-page-19-of-39], (c) \$213 million spent by Puerto Rico pre-PROMESA on lawyers and consultants who worked on the effort to avoid Puerto Rico paying its debts (as previously tallied and reported by me in #4673-page-12&n.2-of-17), and (d) what are presumably significant additional costs incurred by Commonwealth itself to deal with FOMB and the Title III process above and beyond the professional fees incurred by Commonwealth's attorneys and other professionals whose fees are reported to the fee examiner and approved by the Court. The fee examiner on occasion does compile professional fee costs to date, but those numbers are a lagging indicator. For example, on July 13, 2021 the fee examiner reported that "with the eleventh interim fee period (October 1, 2020-January 31, 2021) process well under way, the Fee Examiner has received applications that total approximately \$943 million." #17322-page-2-of-7. Some information on the general breakdown of what entities are responsible for which incurred professional fees and cost projections also appears in FOMB's annual reports available on its website (click on "About Us" tab, and scroll down to "FOMB Reports", then scroll down to the Annual Reports).

**Puerto Rico drops further in World Bank "Doing Business" rankings**

53. Attached as Exhibit T are excerpts from the 2017 World Bank "Doing Business" report (full text available on the Internet) that, on page 7 (Ex. T p.7), ranks Puerto Rico (U.S.) (treated for this purpose by the World Bank as an "economy" separate from the rest of the U.S.) as #55 in the world. (By comparison, the United States is ranked #8.) [Hein Ex. Z/Ex. 26, Dkt. #18760-9]

54. Attached as Exhibit U are excerpts from the 2020 World Bank "Doing Business" report (full text available on the Internet) that show, on page 4 (Ex. U p.4), that after several years of FOMB "oversight," Puerto Rico dropped to #65, falling behind Saudi Arabia (#62) and Ukraine (#64). [Hein Ex. AA/Ex. 27, Dkt. #18760-10]

**Commonwealth and FOMB take steps to put downward pressure on GO and PBA bond prices, creating an opportunity for funds with a short-term orientation to purchase large stakes at deeply depressed prices**

55. Commonwealth initially used its unlawful unilateral refusal to pay its Constitutional “first claim” priority debt to put downward pressure on GO and PBA bond prices (which fell to as low as the low 60s and high 50s as a percent of par in the late June 2015-early July 2015 time frame, see #7540-1-page-38-of-70, using a series 2012A term bond with a 2037 maturity as an example). FOMB then “doubled-down” on measures, such as filing this Title III in May 2017 and failing to pay even interest on the Constitutional “first claim” priority debt, that also served to depress bond prices and opened the door to hedge funds with a short-term orientation buying large stakes at deeply depressed prices (prices in the mid-50s as a percent of par in the May 2017 time frame, see #7540-1-page-54-of-70). Even before hurricanes Irma and Maria hit in September 2017, the 2012A 2037 term bond prices dropped to the lower 50s. #7540-1-page-58-of-70. Later in 2017, after the hurricanes hit, prices fell to the high teens - low 20s. For example, on 12/4/2017 \$48,363,000 par of the 2012A 2037 maturity term bond – almost 20% of the entire issue size – traded in the high teens – low 20s. #7540-1-page-56-to-57-of-70.

56. The downward pressure on the bond prices opened the way to FOMB being able to negotiate, in the confidential process that had been established in the summer of 2017, the initial PSA agreements that served the short term interests of the hedge funds who negotiated them, but were highly detrimental to the interests of unrepresented individual Retail Investors – many, like me, who had bought around the time of the initial bond offerings, years before PROMESA was ever in prospect.

57. FOMB’s meritless challenges to bond validity further adversely impacted the prices of certain series of bonds, further enhancing FOMB’s ability to take advantage of the short-term orientation of active hedge fund traders to strike deals with selected parties in the confidential mediation-negotiation process to the detriment of unrepresented Retail Investors. The price-manipulative impact of FOMB’s challenges is evident from what has happened to the

price of GO bonds after market participants learned of the planned or actual filing of these meritless challenges. The bonds issued in 2009, 2011 and 2012 traded at roughly equivalent relative levels on July 1, 2015, after Puerto Rico's Governor announced a purported inability to pay, and continued to trade at roughly equivalent levels for years thereafter. #7540-1-page-1-of-70, summarizing trading on the pages that follow. However, around January 2019 – when the invalidation objections began to be filed – the prices of the 2009, 2011 and 2012 bonds began to diverge. By June 12, 2019 the 2009 bonds traded at prices about 32% above 2012, and about 9% above 2011. #7540-page-15-to-18-of-19; #7540-1-page-1-to-67-of-70.

58. The Plan reflects not adjudications on a public record of the relative rights of GO and PBA bondholders and other creditors, but instead the Plan incorporates the results of a completely opaque closed-door process where deals were cut outside the view of Retail Investors who FOMB admits did not participate in negotiating the Plan (#17420-page-19-of-27). The fact that other bondholders, including hedge funds who bought at distressed prices post-PROMESA, have been willing to settle their claims in no way undermines the Constitutional and statutory “first claim” secured position of GO and GO guaranteed bondholders: those settling parties are receiving special consideration, including Consummation Costs and other benefits, and, as to post-PROMESA purchases at deep discounts (enabled in part as a result of steps taken by Commonwealth and FOMB), are undoubtedly enjoying significant profits even if they receive less than full principal plus full accrued interest to date.

**FOMB's repeated agreements to provide additional benefits for Puerto Rico unions, public employees and public employee retirees.**

59. Attached as Exhibit V is FOMB's 10/14/2021 letter to Puerto Rico officials offering to amend the Plan to, *inter alia*, eliminate any cuts to accrued pensions of current and retired public employees; provide additional funding to municipalities; provide additional funding to UPR “to improve the student experience and environment;” provide \$1 million to study the feasibility of extending Medicaid coverage; and create “a mechanism to advance the

terms of payment and debt cancellation following the termination” of FOMB. [Hein Ex. BB/Ex. 28, Dkt. #18760-11]

60. Attached as Exhibit W is FOMB’s 10/8/2021 statement concerning P.R. House Bill 1003. FOMB states, in part: “Puerto Rico House Bill 1003, as amended and approved by the Senate, conditions the issuance of the bonds on provisions that would cost tens of billions of dollars. In addition to preventing any cuts to government retirees’ pension benefits, the Senate’s bill would prevent the freezing and reforming of the insolvent pension plans that previous Puerto Rico governments underfunded for decades. It adds costly mandates and massive spending increases as a condition to implementing the 7th Amended Plan of Adjustment.” [Hein Ex. CC/Ex. 29, Dkt. #18760-12]

**Puerto Rico’s failure to remedy issues with its internal controls**

61. Attached as Exhibit AA is FOMB’s 10-12-2021 letter to the Puerto Rico Secretary of the Treasury regarding Commonwealth’s failure to remedy internal control deficiencies. [Hein Ex. DD/Ex. 30, Dkt. #18760-13]

**House Report 114-602**

62. Attached as Exhibit X are excerpts from House Report 114-602, 114<sup>th</sup> Cong., 2d Sess. (June 3, 2016), which accompanied the PROMESA legislation. This material is previously in the record at Docket#17524-page-34-to-36-of-41.

**The Plan does not respect the “first claim” priority and liens of GO bondholders.**

63. Other classes that do not have Constitutional priority are unimpaired (*e.g.*, Classes 51A,51C,51J,51K,55,57,67,68) or receive percentage recoveries, ranging from 91.5% up to 100%, that are larger than GO and PBA bondholders receive (Classes 51B,51D-to-51I,51L,69). #17628-page-79,464,466-to-481,489-to-491,504-of-654. The unimpaired claims include energy incentive and tax incentive claims aggregating over \$2 billion. #17628-page-489-to-491-of-654.

64. Yet additional classes that do not have Constitutional priority nevertheless receive non-contingent cash recoveries, including cash payments to public employees and their unions. E.g. Class 52,53,56,58. #17628-page-486-to-488,490-to-494-of-654.

65. Under FOMB's own projections, over \$2.1 billion of "Excess Cash Surplus" may be paid out for Upside Performance Bonuses (\$1.551 billion) and Benefit Restoration (\$620.6 million) in FY22-FY26. (#17627-page-41(\$1.118), 57(\$1.234), 127(\$56.1(a)), 234-to-235,258-to-259-of-291; #17628-8-page-44-of-309; #16908-page-15-to-16,20-of-178). If the Medicaid funding "cliff" is averted (*see* above discussion), added payments for Upside Performance Bonuses, Benefit Restoration and Pension Reserve contributions will be staggering.

66. If the 5/27/2020 fiscal plan projections are used as the benchmark, the added payments to or for the benefit of public employees and retirees and their unions will be doubly staggering. In this regard, FOMB has stated in 20.2.5 of the 4/23/2021 fiscal plan that "In order to ensure that retirees may benefit from the Commonwealth's outperformance of 2020 Fiscal Plan financial projections, the Plan of Adjustment also contemplates a mechanism whereby retirees subject to the aforementioned reduction in monthly pension benefits may see that reduction partially, or even fully, restored in cases where the Commonwealth materially exceeds the financial projections in the Fiscal Plan that is certified by the Oversight Board and is in effect as of the Effective Date of the Plan of Adjustment," *see* #17628-8-page-279-to-280-of-309. The 5/27/2020 fiscal plan projects lower surpluses or greater deficits than the 4/23/2021 fiscal plan, and thus the potential added payments and benefits to public employees and retirees from supposed outperformance of the 5/27/2020 fiscal plan numbers are staggering. *Compare* 2020 fiscal plan (#15988-5-page-41-of-272 Ex. 14) [Hein Ex. I/Ex. 9, Dkt. #18759-2] *with* 2021 fiscal plan (#17628-8-page-44-of-309 Ex. 18) [Hein Ex. H/Ex. 8, Dkt. #18759-1]; *see also* #16908-page-15-to-20-of-178. (Perhaps FOMB will now say it really didn't mean what it said in section 20.2.5, which is phrased in a confusing and contradictory fashion, but 20.2.5 says what it says.)



**Notifications of the voting and ATOP delivery deadlines, and additional problems experienced in that process.**

67. Supplementing the materials previously submitted with my motions to extend the voting deadline and for other relief (#18237, #18247, #18306, #18439), attached as Exhibit EE is a Merrill notice (in relation to CUSIP 74514LB63) that the revised deadline for providing instructions was October 12 at 3pm, 6 days in advance of the October 18 extended voting deadline. [Hein Ex. HH/Ex. 34, Dkt. #18760-17] I found this by looking online; it was not until October 16, 2021 (after the deadline for instructions had passed) that I received this in the mail. (Mail delivery of “corporate action” notices is often 10-14 days after the date of the notice; typically these notices advise customers of bond calls or redemptions six weeks or so into the future and thus typically these “corporate action” notices do not require immediate action by either the customer or the broker).

68. Attached as Exhibit FF is a notice of the extended voting deadline of October 18, 2021, received by mail from Merrill on October 12, 2021, 12 days after the 10/1/2021 date of the notice, and on the very day of the deadline for instructions. [Hein Ex. II/Ex. 35, Dkt. #18760-18] The notice reads: “Dear Client: We have been requested to forward you the enclosed material in regard to an extension deadline of October 18, 2021. If you have any questions, please contact your Financial Institution directly.” [sic] A copy of #18258 is enclosed with the notice. I received this same form of notice, with the same enclosure and in the same plastic black envelope, from Morgan Stanley, also on October 12, 2021. It would appear from the fact the language is identical, the packaging was identical, and the brief two sentence notice speaks of “contact your Financial Institution directly” that these notices were not drafted by the brokerage firms, but rather were prepared by FOMB’s solicitation agent, which may also have arranged the mailing (explaining the identical plastic envelopes).

69. Attached as Exhibit GG is a declaration by Mark Elliott, dated October 15, 2021, concerning issues he and his clients have had in attempting to vote and deliver their bonds through ATOP.

**Legislative history for 48 U.S.C. Section 737**

70. Attached as Exhibit Y is 93 Cong. Rec. Part 8 at 10402, col. 3 (July 26, 1947) (also in the record at #4606-8-page-174-to-175-of-180).

71. Attached as Exhibit Z is Senate Report 422, 80th Cong., 1st Sess. at 3-4 (July 2, 1947) (stating that “Legislation in Puerto Rico has discriminated against nonresident American citizens,” and that “The purpose of this addition is to assure that the citizens of the United States not residing in Puerto Rico will have the same treatment in Puerto Rico as local residents.”)(also in the record at #4606-8-page-176-to-180-of-180)

**Discovery responses from AAFAF and FOMB**

72. Attached are excerpts of cited pages from discovery responses by AAFAF and FOMB that are referenced in my Objection to Confirmation of the Plan: (a) Exhibit HH is AAFAF’s response and objections to Hein Request for Production - Set 1 (8-27-2021 ); (b) Exhibit II is FOMB’s response and objections to Hein Request for Production - Set 1 (8-27-2021); (c) Exhibit JJ is AAFAF’s 9-24-2021 response and objections to Hein Request for Production - Set 2; (d) Exhibit KK is FOMB’s 9-24-2021 response and objections to Hein Request for Production - Set 2; (e) Exhibit LL is AAFAF’s 9-27-2021 response and objection to Hein Interrogatories - Set 1; (f) Exhibit MM is FOMB’s 9-27-2021 response and objection to Hein Interrogatories - Set 1. [Hein Ex. KK/Ex. 37, LL/38, MM/39, NN/40, OO/41 and PP/42, Dkt. #18760-20 through #18760-25]

Dated: October 19, 2021  
[Annotated 11-3-2021]

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/s/Peter C. Hein  
Peter C. Hein

**Certificate of Service**

I, Peter C. Hein, certify that I have caused the foregoing “[Annotated version of #18575-page-51-to-75-of-303 that incorporates exhibit numbers] Declaration of Peter C. Hein accompanying Objection to Confirmation of Plan by Individual GO and PBA Bondholder” to be served via the Court’s CM/ECF system.

October 19, 2021

(Re-served annotated version November 3, 2021)

/s/ Peter C. Hein

Peter C. Hein